

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MARK A FAVORS, et al.,

Plaintiffs,

11-cv-5632 (DLI) (RLM)

-against-

ANDREW M. CUOMO, et al.,

**ANSWER TO ROSE
INTERVENORS**

Defendants.
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Defendant BRIAN M. KOLB, Minority Leader of the New York State Assembly (“Defendant Kolb”), by and through his attorneys, Couch White, LLP, as and for his Answer to the Complaint-in-Intervention (“Rose Complaint”) of Intervenor-Plaintiffs Linda Rose, Everet Mills, Anthony Hoffman, Kim Thompson-Werekoh, Carlotta Bishop, Carol Rinzler, George Stamatiades, Josephine Rodriguez and Scott Auster (“Intervenor-Plaintiffs”):

1. Defendant Kolb denies each and every allegation in the Rose Complaint except that Defendant Kolb admits the allegations contained in paragraphs numbered “10,” “11,” “12,” “13,” “14,” “15,” “16” and “17.”

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

2. No Intervenor-Plaintiff has suffered an injury in fact.
3. By virtue of the foregoing, Intervenor-Plaintiffs lack standing to maintain this lawsuit.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

4. Defendant LATFOR’s reapportionment plan is still being developed and is not yet finalized.

5. Therefore, there is no “case or controversy” for the Court to decide, and the Rose Complaint should be dismissed for lack of subject matter jurisdiction under Federal Rules of Civil Procedure (“FRCP”) 12(b)(1).

AS AND FOR A THIRD AFFIRMATIVE DEFENSE


6. The Rose Complaint fails to state a claim upon which relief can be granted.

7. The Rose Complaint should therefore be dismissed under FRCP 12(b)(6).

WHEREFORE, Defendant BRIAN M. KOLB, Minority Leader of the New York State Assembly, respectfully requests judgment dismissing the Rose Complaint in its entirety, together with such other and further relief as the Court may deem just and proper.

Dated: March 7, 2012
Albany, New York

COUCH WHITE, LLP



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TO: All Parties (via ECF)